

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Mukhtar Adan, et al., and
Jennifer Adkins AKA Tiergan Caley, et al.,

Defendants.

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO REOPEN
A PAID OR DIVERTED STOP ON RED
CITATION**

JOINT STATEMENT OF FACTS

In September 2004, the Minneapolis City Council enacted Minneapolis Code of Ordinances Sections 474.620 to 474.670 to establish a new violation governing the automatic enforcement of traffic signals.

In July 2005, the City of Minneapolis began enforcing Minneapolis Code of Ordinances Section 474.640 at twelve intersections throughout Minneapolis by using a camera to capture the violation. Citations were issued to persons caught violating Minneapolis Code of Ordinances Section 474.640. The citations carried a total fine of \$142 (\$67 fine + \$72 court surcharge + \$3 law library fee).

Citations were mailed to each defendant. With each citation, the defendant received an instruction page, which informed the defendant why he or she had received the citation and laid out two options for resolving the citation (Exhibit 1). The first option available was for defendants who were not the actual driver. This option specifically instructed the defendant to fill out the "identify new driver" coupon and mail it back to the Minneapolis Police Department. The second option available was for defendants who wanted to plead guilty to the offense and

this option gave the defendants instructions on the various ways to pay their fine. Finally, the instruction page informed defendants that if they wanted to plead not guilty and contest the citation, they must appear in person before an Administrative Hearing Officer.

On August 16, 2005, Daniel Alan Kuhlman was charged with violating Minneapolis Code of Ordinances Section 474.640. On October 26, 2005, Kuhlman pled not guilty and a court trial was scheduled for December 21, 2005. On December 15, 2005, Kuhlman filed a motion to dismiss the charge on various constitutional grounds. On March 14, 2006, the Honorable Mark Wernick issued an order granting Kuhlman's motion to dismiss on the ground that the City of Minneapolis lacked the authority to enact Minneapolis Code of Ordinances Sections 474.620 to 474.670. Judge Wernick did not address any of the constitutional issues raised by Kuhlman in his motion.

On March 20, 2006, the City of Minneapolis filed a notice of appeal with the Minnesota Court of Appeals. On September 22, 2006, in State v. Kuhlman, 722 N.W.2d 1 (Minn. Ct. App. 2006), the Court of Appeals affirmed the decision of the trial court, holding that the City of Minneapolis was preempted by state law from enacting Minneapolis Code of Ordinances Sections 474.620 to 474.670. The Court of Appeals did not address the due process arguments raised on appeal. On October 18, 2006, the City of Minneapolis petitioned the Minnesota Supreme Court for review and the City's petition for review was granted on December 12, 2006. Oral arguments were held before the Minnesota Supreme Court, and on April 5, 2007, the Supreme Court affirmed both the lower court's and Appellate Court's decision holding that the City of Minneapolis did not have authority to enact and enforce these ordinances.

Several defendants who were charged with violating Minneapolis Code of Ordinances Section 474.640 have filed motions to reopen their resolved citations in Hennepin County

District Court. These motions can be divided into two categories – persons who pled guilty to the offense and persons who received a diversion by entering into an agreement to suspend prosecution.

As of September 18, 2007, ninety-seven (97) defendants who pled guilty to the charge have filed motions to reopen their paid citation (Exhibit 2). The majority of these defendants paid the \$142 fine but others negotiated a lower fine with a hearing officer. Some defendants paid more costs due to the imposition of late fees, delinquency fees or collection fees which were added to the fine due to their initial failure to respond to the citation. The reasons cited by the defendants for requesting the citations be reopened are as follows: (A) the cameras are illegal (38); (B) the defendant was not the driver (26); (C) there is a factual issue in the case (11); (D) the cameras are illegal and the defendant was not the driver (6); (E) the defendant wants an expungement or believed the violation would not go on their driving record (5); (F) several cited various miscellaneous reasons (6); and (G) several did not cite to any specific reason (5).

As of September 18, 2007, sixty-one (61) defendants who entered into diversion agreements have filed motions to reopen their diverted citations (Exhibit 3). These defendants met with a hearing officer and signed agreements to suspend the prosecution of their citations. The majority of these defendants paid the \$142 as prosecution costs. A few defendants negotiated lower court costs and some paid higher court costs to cover the imposition of a late fee, delinquency fee or collection fee that was added due to the defendant's initial failure to respond to his or her citation. In all sixty-one cases, the citations have been dismissed pursuant to the terms of the agreement.. The reasons cited by the defendants for requesting the citations be reopened are as follows: (A) the cameras are illegal and unconstitutional (36); (B) there is a factual issue in the case (6); (C) the ticket was given by a camera and not a police officer (5); (D)

the defendant was not the driver (3); (E) no reason was listed (3); (F) the defendant was not the driver and the cameras are unconstitutional (1); and (G) various miscellaneous reasons were cited (7).

Both categories of motions are currently pending in the Hennepin County District Court before the Honorable Mark Wernick.

ARGUMENT

I. Defendants who paid the citations have entered guilty pleas to the charge and should not be allowed to withdraw the guilty plea after sentence.

A defendant does not have an absolute right to withdraw a guilty plea. Kim v. State, 434 N.W.2d 263, 266 (Minn. 1989). The standard to be applied in these cases is found in Minnesota Rules of Criminal Procedure 15.05, subdivision 1, which states that “the court shall allow a defendant to withdraw a plea of guilty upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” A manifest injustice occurs if the guilty plea was not accurate, voluntary and intelligently made. Perkins v. State, 559 N.W.2d. 678, 688 (Minn. 1997). The burden of proof is on the person making the motion to withdraw the guilty plea and the facts must be established by a fair preponderance of the evidence. Minn. Stat. § 590.04, subd. 3 (2006).

The argument set forth in the amicus brief merges the fair and just standard with the manifest injustice standard. The fair and just standard found in Minnesota Rules of Criminal Procedure 15.05, subdivision 2, does not apply to these cases. Minnesota Rule of Criminal Procedure 15.05, subdivision 2, allows a defendant to withdraw a guilty plea *prior to sentencing* if it is fair and just to do so. In all of the motions before this court, the guilty plea has been entered and sentence was imposed in the form of a fine. The court may not apply the fair and

just standard found in Minnesota Rules of Criminal Procedures 15.05, subdivision 2 in these cases.

No defendant has proven by a preponderance of the evidence that he or she did not enter an accurate, voluntary or intelligent plea of guilty. An accurate plea must demonstrate that the defendant is guilty of a crime at least as serious as that to which he is pleading. Brown v. State, 449 N.W. 2d 180, 182 (Minn. 1989). No defendant has argued or presented any evidence to show that his or her guilty plea was not accurate. At the time the plea was entered, Minneapolis Code of Ordinances Section 474.640 provided that the owner of a motor vehicle was guilty of a petty misdemeanor offense if a vehicle he or she owned was captured by a camera failing to obey a traffic control device. Each of the defendants who pled guilty owned the vehicle named in the citation, which was captured by a camera failing to obey a traffic control device. Therefore, each defendant entered an accurate guilty plea for violating Minneapolis Code of Ordinances Section 474.640.

A plea is voluntary if it is not made in response to improper pressures or inducements. Alanis v. State, 583 N.W.2d. 573, 577 (Minn. 1998). No defendant has argued or presented any evidence to show that he or she entered their guilty plea out of improper pressure or inducement.

A plea is intelligently made if the defendant understands the charges, the rights he is waiving by pleading guilty, and the consequences of pleading guilty. Brown at 182. No defendant has argued or presented any evidence to show that he or she did not intelligently enter his or her plea of guilty.

When a defendant enters a plea of guilty, he or she is waiving the right to not only contest the facts of the violation at trial but he or she is also waiving the right to challenge the validity of the ordinance or statute under which he or she is charged. At the time each of these defendants

entered his or her guilty plea, Minneapolis Code of Ordinances Section 474.640 was a valid ordinance. Minneapolis Code of Ordinances Section 474.640 was enacted in September of 2004 amid significant media attention about the enactment and enforcement of this new ordinance. At the time each defendant was issued a citation, he or she knew or should have known that this was a new ordinance. After receiving a citation for violating section 474.640, each defendant had the option to bring a motion to dismiss the citation challenging the invalidity of the ordinance. Each defendant who pled guilty made the choice to not make such a challenge, and thereby waived his or her right to make such a challenge.

While not dealing with the same issue, the Minnesota Supreme Court in State v. Hamm, 423 N.W.2d 379 (1988), held that a defendant who failed to challenge a statute which was later held to be unconstitutional is held to have waived his or her constitutional right affected by the statute. Hamm at 386. In Hamm, the Supreme Court held that Minnesota Statute Section 593.01 was unconstitutional since it only provided for a six person jury in the case of a defendant charged with misdemeanor driving while under the influence of alcohol. Id. The defendant in that case agreed to have a trial by a jury of six persons rather than objecting to the statute. Id. at 380. In denying the defendant's appeal, the Supreme Court held that any defendant who did not raise a constitutional issue at his or her trial in essence has waived his or her objection to the unconstitutional provision and could not go back and raise the issue on appeal. Id. at 386.

In each of these motions, each defendant who pled guilty waived his or her right to challenge the validity of Minneapolis Code of Ordinances Section 474.640. The defendants cannot now avail themselves of the challenge made by defendant Kuhlman and raise this issue after sentencing in a motion to reopen a paid citation. The issues raised by defendant Kuhlman were available to each defendant who now challenges his or her plea.

The specific reasons cited by the defendants in support of each defendant's motion to reopen do not amount to manifest injustice. Thirty-eight defendants cite as a reason that the cameras are illegal. This argument was available to these defendants prior to pleading guilty. By pleading guilty these defendants waived that challenge. Twenty-six defendants claim that they were not the driver. This is a factual issue. Each defendant could have nominated the driver through the nomination process prior to entering a plea of guilty. By pleading guilty these defendants waived that factual issue and admitted that their conduct violated the ordinance. Six defendants raise both of these issues. Eleven defendants cite a factual dispute. By pleading guilty these defendants waived their right to challenge the underlying facts and admitted that their conduct violated the ordinance. Ten defendants cite various reasons: seeking an expungement or claiming they were told the violation would not go on their record (5); claiming the camera was not working and the program was illegal (1); claiming both a factual issue and that the program was illegal (1); seeking a refund (1); challenging the burden of proof (1); and claiming they sold the license plates (1). All of these defenses were available to each defendant prior to pleading guilty. By pleading guilty each defendant waived his or her right to raise these issues in his or her particular case. One defendant claims that another person paid her citation without her knowledge. This defendant has provided no proof to support this claim, such as the name of the person who paid the citation or any proof of payment in the form of a credit card receipt or cancelled check. By failing to provide this specific information, this defendant has not met her burden of proof in this matter. Finally, five defendants give no reason for requesting his or her citation be reopened and therefore cannot satisfy the burden to show manifest injustice occurred in his or her case. By entering a plea of guilty, each defendant has waived his or her

right to present any possible defense and waived his or her right to challenge the constitutionality and validity of the ordinance.

II. Defendants who entered into an agreement to suspend prosecution (CWOP) received the benefit of the agreement and should not be allowed to have the agreement voided.

A continuance for dismissal has been described as follows:

a continuance for dismissal under Minn. R. Crim. P. 27.05 and Minn. Stat. § 609.123 (2004) is an agreement between the prosecutor and the defendant that prosecution will be suspended for a designated period of time on certain conditions, including that the defendant refrain from committing additional offenses and waive the right to speedy trial. The district court does not make a finding of guilt, and the defendant does not make an admission of guilty. State v. C.P.H., 707 N.W. 2d. 699, 703 (Minn. Ct. App. 2006). *See also Minnesota Rules of Criminal Procedure 27.05.*

“At the end of the designated period, if the defendant has met the conditions, the matter is dismissed.” Id. This agreement is entered into at the discretion of the prosecutor.

Several defendants appeared before a hearing officer and entered into agreements to suspend prosecution (also known as a “CWOP”) on citations issued for a violation of Minneapolis Code of Ordinances Section 474.640 (Exhibit 4). The agreement stated that the prosecution of the defendant was to be suspended and the citation was to be dismissed by the City of Minneapolis if the defendant did not commit another similar violation during the time period of the agreement and paid the designated prosecution costs.

The argument set forth in the amicus brief that the agreements should be voided because the City of Minneapolis cannot go forward in prosecution under an invalid ordinance is moot. First, the defense admits that this agreement was valid and enforceable at the time each defendant entered into it with the City of Minneapolis. Should any of these agreements have been violated prior to this court’s ruling in State v. Kuhlman, the City of Minneapolis could have

gone forward in the prosecution of the defendant for a violation of Minneapolis Code of Ordinances Section 474.640.

Second, in every case where the defendant has now filed a motion to reopen a diverted citation, the contract between the City of Minneapolis and the defendant was fulfilled by both parties. Each defendant complied with the terms of the agreement by not re-offending and by paying the designated prosecution costs. The City of Minneapolis complied with the terms of the agreement by suspending the prosecution of each defendant and by dismissing each citation at the end of the designated time period. Since each of these agreements has been fully satisfied, the City of Minneapolis is barred from prosecuting these defendants for the violation because the citation has since been dismissed. Each defendant who entered into an agreement to suspend prosecution received the full benefit of their bargain and therefore this Court should not now go back and void these agreements by granting the defendants' motions to reopen a diverted citation.

Finally, the City of Minneapolis used its prosecutorial discretion in offering a diversion agreement to those defendants who met the City's diversion criteria. Had the City of Minneapolis not authorized diversion in these cases, the defendants would have either had to enter a guilty plea or gone to trial. If the defendants had entered guilty pleas, they would not be entitled to have their plea withdrawn after sentencing. To void the valid agreement entered into by the City of Minneapolis under its prosecutorial discretion would discourage the City of Minneapolis from entering into such agreements in the future.

CONCLUSION

No defendant who entered a plea of guilty to the charge has shown that the guilty plea was not accurately, voluntarily and intelligently made; thus, no defendant has shown that the

withdrawal of his or her guilty plea is necessary to correct a manifest injustice. Therefore, in the case of each defendant who entered a plea of guilty, the City of Minneapolis respectfully requests that this Court deny each defendant's motion to reopen his or her paid citation.

In the case of each defendant who entered into an agreement to suspend prosecution, the agreement was valid when entered into and the terms of the agreement were fulfilled by both parties. Therefore, the City of Minneapolis respectfully requests that this Court deny each defendant's motion to reopen his or her diverted citation.

Dated: September 20, 2007

Respectfully Submitted,

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